



## MEMORANDUM

October 2004

---

TO: CRWCD BOARD OF DIRECTORS

FROM: CHRIS TREESE

RE: COLORADO LEGISLATIVE RADAR SCREEN

---

The following is my current outlook for water-related legislation for the 2005 session. This picture will change and grow considerably in the next couple months, particularly after the elections. The only legislative topic on which I would appreciate additional Board direction at the October meeting is Recreation In-Channel Diversions (RICD). You have a separate memo and related materials on this subject.

**Budget:** Though it doesn't seem possible, the budget will cast an even larger shadow on nearly everything the Legislature considers this coming year. TABOR requires an anticipated \$263 million in additional state budget cuts next year; concurrently, tax refunds of \$460 million will be granted to taxpayers in 2005. An additional \$155 million in cuts is projected for 2006. Further, a law suit over the Legislature's past "borrowing" from various state trust funds may require up to an additional \$440 million in cuts. This lawsuit, however, is likely to take a couple years before there is an "actionable" decision.

For perspective, the \$263 million in required 2005 cuts is roughly equivalent to the General Fund's contribution to the entire state court system. It's more than one-third of the amount we spend on higher education. It's twice as much as the state currently budgets for the Departments of Agriculture, Military and Veterans Affairs, Natural Resources, Public Safety, and Public Health and Environment – combined. In other words, this is a significant amount of money, there are no easy answers, and a lot of programs to be cut.

The legislature will also have to address the final settlement of the Kansas v Colorado compact suit with a \$29 million payment due to Kansas. I have heard no discussion of how this will be paid. The potential TABOR implications of this judgement are not clear to me.

**RICDs:** The interim committee held hearings on Recreational In-Channel Diversions (recreational water rights). There was a clear pre-disposition among committee members to make changes to the existing statute (SB 02-216). They heard from the CWCB, Farm Bureau, and Upper Yampa Water Conservancy District that RICDs are a significant threat to other water users. Rod Kuharich, CWCB executive director, however, recommended the committee wait until the Supreme Court issues a decision in the Upper Gunnison RICD case. Clearly, he is confident that Judge Patrick's ruling will be overturned. Senator Taylor indicated that he will pursue legislation consistent with Tom Sharp's restrictions on RICDs. Senator Isgar may pursue legislation advocated by Steve Harris from the southwest corner of the state prohibiting RICDs and ISFs within 30 miles of the stateline. The Interim Committee took no action.

**Water Quality Funding:** The temporary cash funding for the Water Quality Control Division (WQCD) which was provided in SB 03-276 will sunset in 2005. Renewal or replacement funding is required or the state program will be take over by the EPA. The WQCD is preparing legislation to address this situation. I have been appointed to an advisory committee assisting the department with the draft legislation.

**Home Buyer Notification:** Senator Gordon again wants to require some notification to home buyers if their home relies on the Denver Basin aquifers as a principal source of supply. After considerable amendments, SB 04-101 passed the Senate; the House Ag. Committee killed it. I met with Senator Gordon this summer and suggested that he will likely again have the River District's support, but only if he limits the scope and applicability of the legislation to the Denver Basin aquifers.

**Instream Flows:** HB 03-1320 provided for voluntary loans of a consumptive use water right to a decreed instream flow, but only during Governor-declared droughts. As HB 04-1256 did for interruptible supply agreements, a bill may be introduced in 2005 to remove the limitation that loans to an instream flow only be permitted during Governor-declared droughts.

**Oil & Gas Drilling:** Currently oil, gas and mining operations (with the exception of sand and gravel mining) are not required to secure water rights for their produced water, if any, unless they propose to put the production water to beneficial use. If the operations discharges its waters (instead of evaporation or injection), it needs a discharge permit (NPDES) from the Water Quality Control Commission. However, mineral extraction operations do not require a water right even if they are intercepting tributary ground water and potentially injuring existing rights. Senator Isgar is considering legislation to require oil and gas operators to have a water right (or augmentation plan) if they are intercepting tributary groundwater.

**Recreation authority:** This bill would allow water or water & sanitation districts to provide park

and recreation services and facilities on and around their reservoirs. It would prohibit recreation districts or other districts from providing such services without the water board's permission. This bill will come from the Interim Committee with Senator Dyer (R-Littleton) as the prime sponsor. The Parker Water & Sanitation District requested this legislation to respond to conflicts they have or anticipate with their new Rueter Hess Reservoir.

**CWR&PDA:** The Colorado Water Resources and Power Development Authority (Authority) advocated a bill to eliminate the current requirement that all eligible projects in the Drinking Water Revolving fund and the Water Pollution Control Revolving fund be approved by bill annually. (Prior to 2004 these were handled in separate Joint Resolutions.) An annual status report would be sent to the Senate and House Ag. Committees under the Authority's preferred approach. The Authority requested the Interim Committee sponsor this bill. Senator Isgar and Representative Hoppe moved for approval, but the committee rejected the bill on a 4-5 vote. Those supporting the draft bill may still pursue it.

**Revolving Fund Projects:** As a result of SB 238 from the 2004 session, the Authority's eligible projects for funding from the Drinking Water Revolving fund and the Water Pollution Control Revolving fund must be approved by legislative bill. The Interim Committee approved the 2005 bill. Senator Entz and Representative Hoppe will be the prime sponsors of this bill in 2005.

**SWSI:** It is not yet clear what, if any, legislation will come out of the Statewide Water Supply Initiative (SWSI) process and final report, which is due November 1. However, I anticipate that whether the report recommends specific legislation (unlikely) or not, many will use to report to support and advance their particular agendas.

**Intra-State Compacts:** Russell George has introduced the concept of intrastate compacts to at least assist in settling many of the perennial, trans-basin water disputes. As recently as the River District's water seminar in late September, he advanced this idea. At our seminar, Russell mentioned wanting to have a framework for any necessary legislation prepared by December 1. I spoke with Russell today and although he doesn't yet know what form it might take, he tells me that he is committed to having some form of legislation in the coming year.